# BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 3761

FED-RX PHARMACY

Pharmacy Permit No. PHY 39339

and

DANIEL INBONG LEE

Pharmacist License No. RPH 42633

Respondent.

## **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 19, 2011.

It is so ORDERED September 19, 2011.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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By

STANLEY C. WEISSER Board President

1	Kamala D. Harris		
2	Attorney General of California LINDA K. SCHNEIDER		
3	Supervising Deputy Attorney General DAVID E. HAUSFELD		
4	Deputy Attorney General State Bar No. 110639		
5	110 West "A" Street, Suite 1100 San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone: (619) 645-2025 Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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12	In the Matter of the Accusation Against:	Case No. 3761	
13	FED-RX PHARMACY	OAH No. 2010120753	
14	and	STIPULATED SURRENDER OF LICENSE AND ORDER	
15	DANIEL INBONG LEE	EICENSE AND ORDER	
16	Respondents.		
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18	TT IC TIEDED V CTIDITI ATED AND AC		
19	IT IS HEREBY STIPULATED AND AGREED by and between the parties in this		
	proceeding that the following matters are true:		
20	PARTIES		
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.		
22	She brought this action solely in her official capacity and is represented in this matter by Kamala		
23	D. Harris, Attorney General of the State of California, by David E. Hausfeld, Deputy Attorney		
24	General.		
25	2. Daniel Inbong Lee, individually and doing business as Fed-Rx Pharmacy		
26	(Respondent) is represented in this proceeding by attorney Kevin C. Murphy, whose address is		
27	2445 5th Avenue, Suite 330, San Diego, CA 92101.		
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- 3. On or about August 4, 1989, the Board of Pharmacy issued Pharmacist License No. RPH 42633 to Daniel Inbong Lee (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 3761 and will expire on October 31, 2012, unless renewed.
- 4. On or about May 21, 1993, the Board of Pharmacy issued Pharmacy Permit Number PHY 39339 to Daniel Inbong Lee, doing business as Fed-Rx Pharmacy (Respondent). The Pharmacy Permit was in full force and effect at all times relevant to the charges brought herein. The Pharmacy Permit was cancelled on December 15, 2010 and expired on May 1, 2011.

#### JURISDICTION

5. Accusation No. 3761 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 13, 2010.

Respondents timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3761 is attached as Exhibit A and incorporated by reference.

# ADVISEMENT AND WAIVERS

- 6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 3761. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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#### CULPABILITY

- 9. Respondent admits the truth of each and every charge and allegation in Accusation No. 3761, agrees that cause exists for discipline and hereby surrenders his Pharmacist License No. RPH 42633 and his Pharmacy Permit Number PHY 39339 for the Board's formal acceptance.
- 10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacist License and his Pharmacy Permit without further process.

#### **CONTINGENCY**

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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# <u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacist License No. RPH 42633, issued to Respondent Daniel Inbong Lee, and Pharmacy Permit Number PHY 39339 issued to Daniel Inbong Lee, dba Fed-Rx Pharmacy, are surrendered and accepted by the Board of Pharmacy.

- 1. The surrender of Respondent's Pharmacist License and Pharmacy Permit and the acceptance of the surrendered licenses by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.
- 2. Respondent shall lose all rights and privileges as a pharmacist and to operate a pharmacy in California as of the effective date of the Board's Decision and Order.
- 3. Respondent shall relinquish his wall license and pocket renewal license to the Board within 10 days of the effective date of this decision.
- 4. If Respondent ever applies for licensure in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 3761 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 5. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$12,500.00 prior to issuance of a new or reinstated license.
- 6. If Respondent ever applies for licensure or petitions for reinstatement in the State of California the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 3761 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 7. Respondent may not apply, reapply, or petition for any licensure or registration of the Board for three (3) years from the effective date of the Decision and Order.

ACCEPTANCE I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Kevin C. Murphy. I understand the stipulation and the effect it will have on my Original Pharmacist License and my Pharmacy Permit. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy. Respondent FÉD-RX PHARMACY Respondent I have read and fully discussed with Respondent Daniel Inbong Lee the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content. DATED: Attorney for Respondent Stipulated Surrender of License (Case No. 3761)

# **ENDORSEMENT** The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs. Respectfully submitted, Kamala D. Harris Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General DAVID E. HAUSFELD Deputy Attorney General Attorneys for Complainant SD2010701409 80530080.doc

Exhibit A

Accusation No. 3761

- 11	· ·		
1	EDMUND G. BROWN JR. Attorney General of California		
2	LINDA K. SCHNEIDER Supervising Deputy Attorney General		
3	DAVID E. HAUSFELD		
4	Deputy Attorney General State Bar No. 110639		
5	110 West "A" Street, Suite 1100 San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone: (619) 645-2025 Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
9	BFFORE THE BOARD OF PHARMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against:	Case No. 3761 .	
13	FED-RX PHARMACY 4002 30th Street		
14	San Diego, CA 92104	ACCUSATION	
15	Permit No. PHY 39339		
16	DANIEL INBONG LEE 4002 30th Street	•	
17	San Diego, CA 92104		
18	Pharmacist License No. RPH 42633		
19	Respondent.		
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-21	Complainant alleges:		
22	<u>PARTIES</u>		
23	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity		
24	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.		
25	2. On or about May 21, 1993, the Board of Pharmacy issued Pharmacy Permit Number		
26	PHY 39339 to Daniel Inbong Lee dba Fed-Rx Pharmacy (Respondent Pharmacy). The Pharmacy		
27	Permit was in full force and effect at all times relevant to the charges brought herein and will		
28	expire on May 1, 2011, unless renewed.		
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Accusation

3. On or about August 4, 1989, the Board of Pharmacy issued Pharmacist License Number RPH 42633 to Daniel Inbong Lee (Respondent Lee). Daniel Inbong Lee has been the Individual License owner and the Pharmacist-in-Charge of Fed-Rx Pharmacy since May 21, 1993. The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

# - JURISDICTION

- 4. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
  - 5. Section 4300 of the Code states, in pertinent part:
    - (a) Every license issued may be suspended or revoked.
    - (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
      - (1) Suspending judgment.
      - (2) Placing him or her upon probation.
    - (3) Suspending his or her right to practice for a period not exceeding one year.
      - (4) Revoking his or her license.
    - (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
    - (e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.
- 6. Section 4032 defines "license" to include any license, permit, registration, certificate or exemption issued by the Board.
- 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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8. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

9. Section 4113 (b) of the Code provides that the pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

- 10. Health & Safety Code section 11153, states, in pertinent part:
  - (a) A prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. Except as authorized by this division, the following are not legal prescriptions: (1) an order purporting to be a prescription which is issued not in the usual course of professional treatment or in legitimate and authorized research; or (2) an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use.

#### REGULATORY PROVISIONS

- 11. Title 16, California Code of Regulations (CCR), section 1761 states:
- (a) No pharmacist shall compound or dispense any prescription which contains any significant error, omission, irregularity, uncertainty, ambiguity or alteration. Upon receipt of any such prescription, the pharmacist shall contact the prescriber to obtain the information needed to validate the prescription.
- (b) Even after conferring with the prescriber, a pharmacist shall not compound or dispense a controlled substance prescription where the pharmacist knows or has objective reason to know that said prescription was not issued for a legitimate medical purpose.

#### COST RECOVERY

12. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### **DRUGS**

13. Oxycodone, also sold under the brand name OxyContin, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N), and is a dangerous drug pursuant to Business and Professions Code section 4022.

#### FACTS

- 14. On or about February 17, 2009, Cardinal Health, a prescription drug supplier, notified Respondent Pharmacy, the Board and the DEA that they were suspending sales of controlled substances to Respondent Pharmacy because their controlled substances sales created an unreasonable risk for potential diversion. Respondent Pharmacy could not adequately justify controlled substances sales quantities.
- 15. In or about 2008, Respondent Lee entered into an arrangement with Dr. S.V., a dentist, to fill OxyContin prescriptions for patients of Dr. S.V. The usual arrangement was that Dr. S.V. would phone Respondent Pharmacy with the order for the drug, and then the following day the office manager for Dr. S.V. would bring the patients' prescriptions to Respondent Pharmacy, wait for the prescription to be prepared, pay cash for the drugs and take them with him.

- 16. Respondent Lee did not have a relationship with the patients of Dr. S.V. Respondent Lee never saw or spoke with the patients. Respondent Lee never had a diagnosis for the patients and he had no proof the patients ever received their medication.
- 17. With the exception of the names and addresses of the patients, all of the prescriptions were identical, in that each prescription was for 180 tablets of OxyContin with a dosage of 80 mgs.
- 18. Between April 28, 2008 and September 16, 2009 Respondent Pharmacy filled 138 prescriptions written by Dr. S.V. for 63 patients for a total of 24,840 tablets of OxyContin with an estimated street value of \$1,987,200.00.

#### FIRST CAUSE FOR DISCIPLINE

# (Unprofessional Conduct: Violating State Law Governing Pharmacy)

- 19. Respondent Fed-Rx Pharmacy and Respondent Lee are subject to disciplinary action under Code section 4301, subdivision (o), for violating state law governing pharmacy.

  Respondents failed to comply with Health and Safety Code section 11153 (a) and title 16,

  California Code of Regulations, section 1761, which state that a pharmacist shall not dispense a prescription containing an irregularity or uncertainty, and that a pharmacist has a corresponding responsibility to ensure proper prescribing and dispensing.
- 20. An audit of the pharmacy's records by the Board's inspector for the period April 28, 2008 through September 16, 2009, revealed that Respondents dispensed prescriptions that contained significant irregularities and uncertainties, as more particularly described in paragraphs 14 through 18, above.

### SECOND CAUSE FOR DISCIPLINE

#### (Unprofessional Conduct: Violating State Law Regulating Controlled Substances)

21. Respondent Fed-Rx Pharmacy and Respondent Lee are subject to disciplinary action under Code section 4301, subdivision (j), for violating state law regulating controlled substances. Respondents failed to comply with Health and Safety Code section 11153 (a), by failing to determine if the prescriptions for the OxyContin were to be used for a legitimate medical purpose, as more particularly described in paragraphs 14 through 18, above.

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#### THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Excessive Furnishing of Controlled Substances)

22. Respondent Fed-Rx Pharmacy and Respondent Lee are subject to disciplinary action under Code section 4301, subdivision (d), for the clearly excessive furnishing of controlled substances in violation of Health and Safety Code section 11153 (a), by dispensing 24,840 tablets of OxyContin on prescriptions from one dentist, as more particularly described in paragraphs 14 through 18, above.

# DISCIPLINE CONSIDERATIONS

- 23. To determine the degree of discipline, if any, to be imposed on Respondent Fed-Rx Pharmacy and Respondent Lee, Complainant alleges that on or about April 28, 2004, in a prior action, the Board of Pharmacy issued Citation Number CI 2003-26183 to Respondent Fed-Rx Pharmacy and Citation Number CI 2003-26672 to Respondent Lee and ordered Respondent Fed-Rx Pharmacy to pay a fine of \$1,250.00 and ordered Respondent Lee to pay a fine of \$750.00.
  - 24. The Citations were for the following violations:
- (a) Section 4125 and 16 CCR 1711, for failing to establish a Quality Assurance program to assess medication errors;
- (b) 16 CCR 1715, for failing to have a current Pharmacy Self-Assessment form on file in the pharmacy;
- (c) Title 21, Code of Federal Regulations, section 1304.11, for failing to have a biennial inventory of all controlled substances;
- (d) 16 CCR 1715.5, for failing to transmit California Utilization Review and Evaluation System (CURES) data as required.

Those Citations are now final and are incorporated by reference as if fully set forth.

# **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged. and that following the hearing, the Board of Pharmacy issue a decision: